

1-1 By: Kolkhorst (Senate Sponsor - Nelson) H.B. No. 3201
 1-2 (In the Senate - Received from the House May 6, 2013;
 1-3 May 7, 2013, read first time and referred to Committee on Health
 1-4 and Human Services; May 14, 2013, reported adversely, with
 1-5 favorable Committee Substitute by the following vote: Yeas 8,
 1-6 Nays 0; May 14, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 3201 By: Nelson

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the practice of dentistry; imposing surcharges and
 1-22 fees.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 254.004, Occupations Code, is amended by
 1-25 adding Subsections (c) and (d) to read as follows:

1-26 (c) The board shall collect an additional \$55 surcharge for
 1-27 each of the following fees:

1-28 (1) the fee for the issuance of a dental license; and

1-29 (2) the fee for the renewal of a dental license.

1-30 (d) The board shall deposit each surcharge collected to the
 1-31 credit of the dental public assurance account. The dental public
 1-32 assurance account is an account in the general revenue fund that
 1-33 shall be appropriated only to the board to pay for the board's
 1-34 enforcement program, including an expert panel.

1-35 SECTION 2. Section 254.006(b), Occupations Code, is amended
 1-36 to read as follows:

1-37 (b) Investigation files and other records are confidential,
 1-38 except the board shall inform the license holder of the specific
 1-39 allegations against the license holder [and shall be divulged only
 1-40 to the persons investigated at the completion of the
 1-41 investigation]. The board may share investigation files and other
 1-42 records with another state regulatory agency or a local, state, or
 1-43 federal law enforcement agency.

1-44 SECTION 3. Section 254.018, Occupations Code, is amended to
 1-45 read as follows:

1-46 Sec. 254.018. ~~[EXPERT]~~ TESTIMONY. A member of the board may
 1-47 not express an oral or written opinion or serve as an expert witness
 1-48 in a civil action that is:

1-49 (1) related to an administrative matter within the
 1-50 board's jurisdiction;

1-51 (2) brought [suit involving a health care liability
 1-52 claim] against or for a person licensed or registered under this
 1-53 subtitle; and

1-54 (3) [dentist] for the injury to or death of a patient
 1-55 or for a violation of the standard of care or the commission of
 1-56 malpractice [unless the member receives approval from the board or
 1-57 an executive committee of the board to serve as an expert witness].

1-58 SECTION 4. Chapter 254, Occupations Code, is amended by
 1-59 adding Section 254.019 to read as follows:

1-60 Sec. 254.019. DEFINITIONS. (a) In this section:

2-1 (1) "Dental service agreement" means an agreement
2-2 between a dental service organization and a dentist under which the
2-3 dental service organization will:

2-4 (A) provide services related to the nonclinical
2-5 business aspects of a dental practice, including arranging or
2-6 providing financing, performing billing or payroll tasks,
2-7 processing patient insurance claims, scheduling or otherwise
2-8 interacting with patients, and performing other administrative
2-9 tasks;

2-10 (B) supervise or manage the employees or
2-11 contractors of the dentist; or

2-12 (C) employ or otherwise contract with a dentist
2-13 in the dentist's capacity as a dentist.

2-14 (2) "Dental service organization" means an entity
2-15 that:

2-16 (A) is owned wholly or partly by a person who is
2-17 or is not a dentist; and

2-18 (B) under a dental service agreement, provides or
2-19 offers to provide services to a dentist or employs or otherwise
2-20 contracts with a dentist in the dentist's capacity as a dentist.

2-21 (b) The board shall collect the following information from
2-22 dentists licensed by the board in conjunction with the issuance and
2-23 renewal of each dental license:

2-24 (1) the number and type of dentists employed by the
2-25 license holder, if any;

2-26 (2) the name under which the license holder provides
2-27 dental services and each location at which those services are
2-28 provided by that license holder;

2-29 (3) whether the license holder is a participating
2-30 provider under the Medicaid program operated under Chapter 32,
2-31 Human Resources Code, or the child health plan program operated
2-32 under Chapter 62, Health and Safety Code;

2-33 (4) whether the license holder is employed by or
2-34 contracts with a dental service organization and, if so, the name
2-35 and address of the dental service organization;

2-36 (5) whether the license holder owns all or part of a
2-37 dental service organization and, if so, the name and address of the
2-38 dental service organization and of each dental office at which the
2-39 dental service organization provides services to patients;

2-40 (6) whether the license holder is a party to a dental
2-41 service agreement and, if so, the name and address of the dental
2-42 service organization that provides services under the agreement;
2-43 and

2-44 (7) if the license holder owns all or part of a dental
2-45 service organization, whether that practice is a party to a dental
2-46 service agreement and, if so, the name and address of the dental
2-47 service organization that provides services under the agreement.

2-48 (c) If requested by the board, a dental service organization
2-49 shall provide to the board the address of the locations where the
2-50 organization provides dental services in this state and the name of
2-51 each dentist providing dental services at each location.

2-52 (d) The board shall provide an option for the electronic
2-53 submission of the information required under this section.

2-54 (e) Not later than November 1 of each even-numbered year,
2-55 the board shall provide a report to the legislature on the
2-56 information collected under this section and on the board's use of
2-57 the information in the exercise of the board's statutory authority
2-58 to regulate the practice of dentistry.

2-59 SECTION 5. Sections 255.006(a) and (d-1), Occupations Code,
2-60 are amended to read as follows:

2-61 (a) A complaint received under this chapter must be filed
2-62 with and reviewed by the board to determine jurisdiction. If the
2-63 board has jurisdiction, the board shall complete a preliminary
2-64 investigation of the complaint not later than the 60th day after the
2-65 date of receiving [investigate the complaint to determine the facts
2-66 concerning] the complaint. The board shall first determine whether
2-67 the license holder constitutes a continuing threat to the public
2-68 welfare. On completion of the preliminary investigation, the board
2-69 shall determine whether to officially proceed on the complaint. If

3-1 the board fails to complete the preliminary investigation in the
3-2 time required by this subsection, the board's official
3-3 investigation of the complaint is considered to commence on that
3-4 date.

3-5 (d-1) Procedures established under Subsection (d)(6) must:

3-6 (1) [~~require a board employee to consult with a~~
3-7 ~~dentist member of the board before dismissing a complaint relating~~
3-8 ~~to patient morbidity, professional conduct, or quality of care,~~

3-9 [~~2~~] ensure that the decision to dismiss a complaint
3-10 is made with the appropriate level of review and necessary
3-11 expertise and experience; and

3-12 (2) [~~3~~] require the dismissal of a complaint to be
3-13 reported to the board at a public meeting of the board.

3-14 SECTION 6. Chapter 255, Occupations Code, is amended by
3-15 adding Sections 255.0065, 255.0066, and 255.0067 to read as
3-16 follows:

3-17 Sec. 255.0065. COMPOSITION OF EXPERT PANELS. (a) The board
3-18 by rule shall provide for expert panels appointed by the board to
3-19 assist with complaints and investigations relating to professional
3-20 competency by acting as expert dentist and dental hygienist
3-21 reviewers.

3-22 (b) Each member of the expert dentist panel must be licensed
3-23 to practice dentistry in this state. Each member of the expert
3-24 dental hygienist panel must be licensed to practice dental hygiene
3-25 in this state.

3-26 (c) The rules adopted under this section must include
3-27 provisions governing the composition of the panel, qualifications
3-28 for membership on the panel, length of time a member may serve on
3-29 the panel, grounds for removal from the panel, the avoidance of
3-30 conflicts of interest, including situations in which the affected
3-31 license holder and the panel member live or work in the same
3-32 geographical area or are competitors, and the duties to be
3-33 performed by the panel.

3-34 (d) The board's rules governing grounds for removal from the
3-35 panel must include providing for the removal of a panel member who
3-36 is repeatedly delinquent in reviewing complaints and in submitting
3-37 reports to the board.

3-38 Sec. 255.0066. DETERMINATION OF COMPETENCY. (a) If the
3-39 preliminary investigation under Section 255.006(a) indicates that
3-40 an act by a license holder falls below an acceptable standard of
3-41 care, the complaint shall be reviewed by an expert panel authorized
3-42 under Section 255.0065 consisting of license holders who practice
3-43 in the same specialty as the license holder who is the subject of
3-44 the complaint or in another specialty that is similar to the license
3-45 holder's specialty.

3-46 (b) The expert panel shall report in writing the panel's
3-47 determinations based on the review of the complaint under
3-48 Subsection (a). The report must specify the standard of care that
3-49 applies to the facts that are the basis of the complaint and the
3-50 clinical basis for the panel's determinations, including any
3-51 reliance on peer-reviewed journals, studies, or reports.

3-52 Sec. 255.0067. REPORTS; PROCEDURES FOR EXPERT REVIEW.

3-53 (a) A license holder on an expert panel authorized by Section
3-54 255.0065 who is initially selected to review a complaint shall:

3-55 (1) determine whether the license holder who is the
3-56 subject of the complaint has violated the standard of care
3-57 applicable to the circumstances; and

3-58 (2) issue a preliminary written report of that
3-59 determination.

3-60 (b) A second expert reviewer shall review the first expert
3-61 reviewer's preliminary report and other information associated
3-62 with the complaint. If the second reviewer agrees with the first
3-63 reviewer, the first reviewer shall issue a final written report on
3-64 the matter.

3-65 (c) If the second expert reviewer does not agree with the
3-66 conclusions of the first expert reviewer, a third expert reviewer
3-67 shall review the preliminary report and information and decide
3-68 between the conclusions reached by the first two reviewers. The
3-69 final written report shall be issued by the third reviewer or the

4-1 reviewer with whom the third reviewer concurs.
4-2 (d) In reviewing a complaint, the expert reviewers assigned
4-3 to examine the complaint may consult and communicate with each
4-4 other about the complaint in formulating their opinions and
4-5 reports.

4-6 SECTION 7. Subchapter C, Chapter 256, Occupations Code, is
4-7 amended by adding Section 256.106 to read as follows:

4-8 Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES. The
4-9 board may delegate authority to board employees to issue licenses
4-10 under this subtitle to applicants who clearly meet all licensing
4-11 requirements. If the board employees determine that the applicant
4-12 does not clearly meet all licensing requirements, the application
4-13 shall be returned to the board. A license issued under this section
4-14 does not require formal board approval.

4-15 SECTION 8. Subchapter B, Chapter 258, Occupations Code, is
4-16 amended by adding Section 258.055 to read as follows:

4-17 Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN.

4-18 (a) The parent or guardian of a child younger than 18 years of age
4-19 may be present in the treatment room during the child's dental
4-20 treatment or procedure, unless the dentist determines in the
4-21 dentist's professional judgment that the presence of the parent or
4-22 guardian in the treatment room is likely to have an adverse effect
4-23 on the treatment or the child.

4-24 (b) In this section, "parent or guardian" includes a person
4-25 authorized by law to consent for the medical or dental treatment of
4-26 a child younger than 18 years of age.

4-27 SECTION 9. Chapter 263, Occupations Code, is amended by
4-28 adding Sections 263.0065, 263.0076, and 263.0077 to read as
4-29 follows:

4-30 Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT
4-31 DISPOSITIONS. (a) The board may delegate to a committee of board
4-32 employees the authority to dismiss or enter into an agreed
4-33 settlement of a complaint that does not relate directly to patient
4-34 care or that involves only administrative violations.

4-35 (b) The disposition determined by the committee must be
4-36 approved by the board at a public meeting.

4-37 (c) A complaint delegated under this section shall be
4-38 referred for informal proceedings under Section 263.0075 if:

4-39 (1) the committee of employees determines that the
4-40 complaint should not be dismissed or settled;

4-41 (2) the committee is unable to reach an agreed
4-42 settlement; or

4-43 (3) the affected license holder requests that the
4-44 complaint be referred for informal proceedings.

4-45 Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE. (a)
4-46 If an informal settlement conference will be held under Section
4-47 263.0075, notice of the time and place of the conference must be
4-48 given to the license holder not later than the 45th day before the
4-49 date the conference is held.

4-50 (b) The notice required by Subsection (a) must be
4-51 accompanied by a written statement of the specific allegations
4-52 against the license holder and the information the board intends to
4-53 use at the informal settlement conference. If the board does not
4-54 provide the statement or information when the notice is provided,
4-55 the license holder may use that failure as grounds for rescheduling
4-56 the conference.

4-57 (c) The license holder must provide to the board the license
4-58 holder's rebuttal not later than the 15th day before the date of the
4-59 conference in order for that information to be considered at the
4-60 conference.

4-61 (d) On request by a license holder under review, the board
4-62 shall make a recording of the informal settlement conference. The
4-63 recording is a part of the investigative file and may not be
4-64 released to a third party unless authorized under this subtitle.
4-65 The board may charge the license holder a fee to cover the cost of
4-66 recording the conference. The board shall provide a copy of the
4-67 recording to the license holder on the license holder's request.

4-68 Sec. 263.0077. REMEDIAL PLAN. (a) The board may issue and
4-69 establish the terms of a remedial plan to resolve the investigation

5-1 of a complaint filed under this subtitle.

5-2 (b) A remedial plan may not contain a provision that:

5-3 (1) revokes, suspends, limits, or restricts a person's
5-4 license or other authorization to practice dentistry or dental
5-5 hygiene; or

5-6 (2) assesses an administrative penalty against a
5-7 person.

5-8 (c) A remedial plan may not be imposed to resolve a
5-9 complaint:

5-10 (1) concerning:

5-11 (A) a patient death;

5-12 (B) the commission of a felony; or

5-13 (C) a matter in which the license holder engaged
5-14 in inappropriate sexual behavior or contact with a patient or
5-15 became financially or personally involved with a patient in an
5-16 inappropriate manner; or

5-17 (2) in which the appropriate resolution may involve a
5-18 restriction on the manner in which a license holder practices
5-19 dentistry or dental hygiene.

5-20 (d) The board may not issue a remedial plan to resolve a
5-21 complaint against a license holder if the license holder has
5-22 previously entered into a remedial plan with the board for the
5-23 resolution of a different complaint filed under this subtitle.

5-24 (e) The board may assess a fee against a license holder
5-25 participating in a remedial plan in an amount necessary to recover
5-26 the costs of administering the plan.

5-27 (f) A remedial plan is public information.

5-28 (g) In civil litigation, a remedial plan is a settlement
5-29 agreement under Rule 408, Texas Rules of Evidence.

5-30 (h) The board shall adopt rules necessary to implement this
5-31 section.

5-32 SECTION 10. Not later than December 1, 2013, the State Board
5-33 of Dental Examiners shall adopt rules necessary to implement the
5-34 changes in law made by this Act.

5-35 SECTION 11. Section 254.004(c), Occupations Code, as added
5-36 by this Act, applies only to an application for an original dental
5-37 license or for renewal of a dental license filed on or after
5-38 September 1, 2013. An application filed before September 1, 2013,
5-39 is governed by the law in effect immediately before that date, and
5-40 that law is continued in effect for that purpose.

5-41 SECTION 12. Sections 254.006(b) and 255.006, Occupations
5-42 Code, as amended by this Act, and Sections 255.0065, 255.0066,
5-43 255.0067, 263.0076, and 263.0077, Occupations Code, as added by
5-44 this Act, apply only to the investigation and resolution of a
5-45 complaint filed with the State Board of Dental Examiners on or after
5-46 January 1, 2014. A complaint filed before that date is governed by
5-47 the law in effect on the date the complaint was filed, and the
5-48 former law is continued in effect for that purpose.

5-49 SECTION 13. (a) Except as provided by Subsection (b) of
5-50 this section, this Act takes effect January 1, 2014.

5-51 (b) Section 10 of this Act and Sections 254.004(c) and (d)
5-52 and 254.019, Occupations Code, as added by this Act, take effect
5-53 September 1, 2013.

5-54 * * * * *